IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1075 OF 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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MUNNO NATWARLAL - MINOR THROUGH HIS GUARDIAN-NATWARLAL HEMCHAND - Appellant(s)

Versus

DISTRICT PANCHAYAT & ORS. - Respondent(s)

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Appearance :
Smt. Sangeeta Pahwa for for Appellant(s).
Shri D.D. Vyas for Respondent(s) : 1.
None for Respondent Nos. 2 though served.
None for Respondent No.3 though name of Shri K.M. Parikh is shown in the records.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 01/05/2007

ORAL JUDGMENT

Present is an appeal by a minor through his guardian – Natwarlal Hemchand, being aggrieved by the judgement and award dated 30th March, 1983 made in Claim Petition No.277 of 1982 by the learned Motor Accident Claims Tribunal (Main), Surendranagar, for enhancement of the amount.

2. The short facts necessary for disposal of the matter are that the present appellant met with an accident on 21st February, 1982 in Ratanpar area of Surendranagar, when, as alleged, Naranbhai Dalwadi, a driver, was driving a jeep bearing Registration No. GJS-3347, belonging to the District Panchayat, Surendranagar, as an employee of respondent No.1, rashly and negligently. On 21st February, 1982 at about 10:00 a.m., after the claimant alighted from the bus and was going towards his house, the respondent No.2, driving the vehicle rashly and negligently, hit him,which led to injuries to the present claimant. The claimant, was taken to a Surgical Nursing Home of Dr. Rupesh Mehta, where he was attended and treated by Dr. Pradhyot Thakore; he was admitted there for seven days and operations were carried on. The submission of the claimant is that a big scar was left on the left temporal region as a result of the accident and because of the injury suffered, the claimant is suffering regular headache; he claimed a sum of Rs.5,000/-. He submitted that he had to spend a sum of Rs.5,000/- towards the medical assistance. He, accordingly, claimed a sum of Rs.10,000/- as compensation.

3. The non-claimants resisted the application on almost every point and submitted that the claimant was not entitled to any amount. After recording the evidence and hearing the parties, the learned trial Court held that the vehicle was driven rashly and negligently, the driver

was the author of the accident and he had hit the victim. The learned trial Court, after holding so, entered into the arena of compensation and after relying upon certain judgements of different High Courts, held that there was no disfigurement though there was a contused lacerated wound of 6", the claimant would be entitled to a sum of Rs.2,500/- towards pain, suffering and mental shock and a sum of Rs.1,960/- towards the medical treatment and attendance. The learned trial Court, accordingly, awarded a sum of Rs.4,460/-.

4. Smt. Pahwa, learned Counsel for the claimants, submits that the approach of the learned Court below was not proper and it could not show such apathy to the injuries suffered by others. Her submission is that if there is a scar of 6" on the face, which is on the temporal region, it would certainly cause a permanent scar and would amount to disfigurement. She also submitted that the Court was unjustified in making the calculations in the golden scales, less appreciating that in a matter like this, the Court has to go for guess work and must have a sympathetic approach towards the claimant.

5. Shri D.D. Vyas, learned Counsel for respondent No.1, on the other hand, submits that if the claimant could not prove the expenses and the expenditure, then, the claimant would not be entitled to the amount, as claimed by him. It is also submitted that the Court below was absolutely justified in awarding a sum of Rs.2,500/- towards pain, suffering and shock.

6. From the judgement of the learned Court below, it appears that it has taken a hyper technical view of the matter. Instead of giving a benevolent approach to compensate a victim of the road accident, it started counting the dimes , while, in fact, it was required to consider the

case and count in pounds. The approach of the learned trial Court, in a matter like the present, should always be to compensate the victim or his dependents properly as one cannot weigh pain, shock and suffering in the golden scales.

7. One should also not be allowed to think about the pains, suffering and shock of a third party sitting at his own place. To suffer something and to calculate the suffering are two different things. When a young boy of eight years suffers an injury, which is six inches long, is permanent in nature, leaves an ugly scar and remains in hospital for twelve days with a further direction to take complete rest for twelve days and also suffers with permanent headache, then, he certainly would be entitled to a sum of Rs.5,000/- towards the medical assistance and a sum of Rs.25,000/- towards the mental shock, pains, sufferings and permanent disfigurement. The Court below, in the opinion of this Court, did not properly appreciate the facts and erred in awarding only a sum of Rs.4,460/-.

8. The appeal is allowed and the claim made by the appellant is awarded *in toto.* Though in the opinion of this Court, the appellant was entitled to the full claim, but, as he has restricted the claim to Rs.10,000/- only, he would be entitled to an additional sum of Rs.10,000/-, which shall carry interest at the rate of 9% per annum from the date of the application till the date of realisation. Accordingly, the impugned judgement and award stands modified. No order as to costs.

[R.S.Garg, J.]

*kamlesh**